

In view of this background, each of the rejections made in the outstanding Office Action will now be addressed in turn.

REJECTIONS UNDER 35 U.S.C. §102¹

The Office Action rejected the identified claims under 35 U.S.C. §102 as anticipated by (1) U.S. patent 6,071,524² (“Ribier I”) (claims 1-36); (2) U.S. patent 5,834,018 (“Ribier II”) (claims 1-3, 5, 6, 15, 17-19, 21, 23-27, 28, 30, 31, 32 and 34-36); (3) U.S. patent 6,207,694 (“Murad”) (claims 1-4, 23-26, 28, 29, 31-33 and 35); and (4) U.S. patent 6,110450 (“Bergmann”) (claims 1-4, 23, 24, 26 and 29). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

As noted above, the claimed methods relate to the use of phytanetriol to prevent adhesion or adsorption of pollutants on skin, thereby keeping pollutants off the skin, and preventing the pollutants from penetrating into the skin.

Ribier I discloses compositions containing phytanetriol but does not provide any instruction regarding how to use or apply such compositions. Thus, Ribier I does not contain any teaching regarding application or use that would result each and every time in preventing the adhesion or adsorption of pollutants to skin, thereby keeping pollutants off the skin and preventing the pollutants from penetrating into the skin. Accordingly, Ribier I cannot anticipate the claimed methods, either expressly or inherently.

¹ The Office Action objected to claim 35. Claim 35 has been canceled, thereby rendering this objection moot.

² The Office Action refers to U.S. patent 6,207,694 instead of U.S. patent 6,071,524. However, because the ‘694 patent issued to Murad and not Ribier, presumably this rejection is based on the ‘524 patent.

Ribier II is mostly silent regarding how to use or apply the compositions disclosed therein, but does disclose applying “Composition A” containing phytanetriol to the forearms of 12 individuals to determine whether such application has a hydrating effect on forearm skin. (Col. 7, line 61 et seq.). However, there is no indication as to whether the forearm skin is covered (for example, by a long-sleeved shirt or a sweater) or uncovered after application of Composition A. Because no disclosure exists regarding whether the forearm skin is or should be covered or uncovered, it cannot be said that application of “Composition A” as described in Ribier II results each and every time in preventing adhesion or adsorption of pollutants to skin, thereby keeping pollutants off the skin and preventing the pollutants from penetrating into the skin (assuming *arguendo* that application of “Composition A” as described in Ribier II can, under certain circumstances, result in such pollutant penetration limitation). For example, if forearm skin is covered, pollutants have less access to the skin (if any), meaning that a pollutant penetrating limiting effect from application of Composition A could not result, was not sought, and was not necessary. Accordingly, Ribier II cannot anticipate the claimed methods, either expressly or inherently.

Murad relates to compositions for managing scalp conditions containing an acidic component (for example, an AHA), a retinoid and an anti-growth agent. Although Murad includes a small amount of phytanetriol (0.3% or less) in some examples, Murad does not teach or suggest that phytanetriol is responsible for any beneficial results, let alone the claimed pollutant penetration limiting result. Furthermore, based on Van Scott’s teachings,³ one skilled in the art would not expect Murad’s compositions to inhibit penetration of

³ Van Scott teaches that adding AHAs to compositions enhances penetration of chemical agents into skin. (See, U.S. patent 5,665,776, copy attached hereto).

chemical agents into skin. Rather, one would expect enhanced penetration. Thus, one would not expect Murad's compositions to achieve the claimed result.

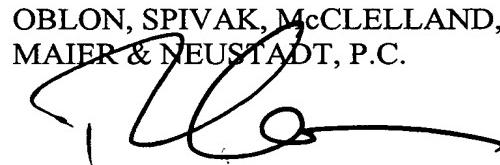
Bergmann relates to compositions containing (1) ceramides and/or glycoceramides; and (2) up to 1% phytanetriol. However, Bergmann attributes the asserted ability of his compositions to protect hair from inclement weather and unsuitable hair treatments to the ceramide/glycoceramide component, not phytanetriol. (Col. 1, lines 16-30). Moreover, Bergmann suggests that phytanetriol is added to the compositions to enhance cosmetic performance. (Col. 1, lines 30-37). Thus, Bergmann does not teach or suggest that applying phytanetriol to hair would result in any of the claimed results.

In view of the above, Applicants respectfully submit that the rejections under 35 U.S.C. §102 should be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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1. (Amended) A method of protecting keratin materials from the harmful effects of pollution, comprising topically applying a composition comprising a[n] pollutant penetration limiting effective amount of phytanetriol to said keratin materials.
23. (Amended) A treatment process for protecting a keratin material against the effects of pollution, comprising applying to the keratin material a composition comprising a[n] pollutant penetration limiting effective amount of phytanetriol in a physiologically acceptable medium.
24. (Amended) A treatment process for improving the cell respiration and/or for reducing the desquamation of a keratin material and/or for preventing a keratin material from becoming dull and/or dirty [and/or for preventing the dehydration of keratin material], comprising applying to the keratin material a composition comprising a[n] pollutant penetration limiting effective amount of phytanetriol in a physiologically acceptable medium.

Claims 25 and 32-36 (canceled)